
EXPLANATORY NOTE

(This note is not part of the Rules)

Section 4 of the Human Rights Act 1998 gives the Courts-Martial Appeal Court the power to make a declaration that a provision of primary legislation is incompatible with the European Convention on Human Rights. Rules 3, 5 and 6 of these Rules amend the Courts-Martial (Appeal) Rules 1968 to provide the procedure for the making of a declaration of incompatibility, and in particular for the service of notice on the Crown as required by section 5 of the 1998 Act.

Rule 4 provides for the application of the Crime (Sentences) Act 1997 to certain sentences passed by courts-martial. Unless there are exceptional circumstances which justify its not doing so, a court-martial is required to impose a mandatory life sentence where the accused is convicted on a second occasion of one of certain serious offences, and the corresponding civil offence is one to which section 2 of the 1997 Act would apply. If the conviction for the first offence is subsequently quashed or set aside, the accused will normally be out of time to appeal against the sentence for the second offence. Rule 4 extends the time within which an appeal against sentence may be lodged.

The Crime (Sentences) Act 1997, though still in force at the date these Rules are made, will on 25th August 2000 be repealed and replaced by a consolidation Act, the Powers of Criminal Courts (Sentencing) Act 2000. As from the date of entry into force of these Rules the references to section 2 of the 1997 Act should be read as references to section 109 of the 2000 Act.